

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

American Bank of St. Paul,

Plaintiff,

v.

ORDER

Civil No. 09-2240 ADM/TNL

TD Bank, N.A.,

Defendant.

Eric J. Nystrom, Esq., Anthony N. Kirwin, Esq., Daniel N. Sacco, Esq., John C. Ekman, Esq., and William P. Wassweiler, Esq., Lindquist & Vennum PLLP, Minneapolis, MN, on behalf of Plaintiff.

Alan L. Kildow, Esq., Jeffrey E. Mitchell, Esq., and Sonya R. Braunschweig, Esq., DLA Piper LLP, Minneapolis, MN and San Francisco, CA, and Eric S. Golden, Esq., Howard S. Marks, Esq., and Joe A. Joseph, Esq., Burr & Forman LLP, Orlando and Winter Park, FL and Birmingham, AL, on behalf of Defendant.

This matter is before the undersigned United States District Judge for a ruling on Plaintiff American Bank of St. Paul's ("American Bank") Motion for Review of the Clerk of Court's Cost Judgment [Docket No. 320]. In the Cost Judgment [Docket No. 294], the Clerk of the Court denied \$76,866.02 of the total \$157,431.56 claimed by American Bank. American Bank argues that it is entitled to \$76,370.30 of those denied costs, including \$20,476.25 in video deposition costs, \$19,683.30 in video presentation costs, and \$36,210.75 related to a mock jury trial conducted for trial preparation.

The Court upholds the Clerk's Cost Judgment, with the exception of the denied \$20,476.25 in video deposition costs. Cost recovery for stenographic transcripts as well as video recording is

permissible. Craftsmen Limousine, Inc. v. Ford Motor Co., 579 F.3d 894, 898 (8th Cir. 2009) (holding that video deposition costs may be taxed under 28 U.S.C. § 1920 where not unreasonable or unnecessary); Fair Isaac Corp. v. Experian Information Solutions Inc., Civ. No. 06-4112, 2010 WL 2089999, at *1 (D. Minn. May 21, 2010) (modifying a cost judgment to include video deposition costs in addition to written transcripts where the recordings were necessary); Morrison v. Reichhold Chems., Inc., 97 F.3d 460, 464-65 (11th Cir. 1996) (“[W]e hold that, when a party notices a deposition to be recorded by nonstenographic means, or by both stenographic and nonstenographic means, and no objection is raised at that time . . . it is appropriate under § 1920 to award the cost of conducting the deposition in the manner noticed.”); see also 28 U.S.C. § 1920(2) (“A judge or clerk . . . may tax as costs . . . [f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case.”). The Court is satisfied in this case that both transcripts and video recordings of the depositions were reasonably necessary at the time they were obtained.

As for costs associated with video presentation, these are not normally taxable costs and were not necessary here. Cf. E.E.O.C. v. Hibbing Taconite Co., Civ. No. 09-729, 2010 WL 4237318, at *4 (D. Minn. Oct. 21, 2010) (awarding taxation of video equipment where the “Duluth courthouse lack[ed] multimedia equipment to easily display such evidence.”). Additionally, mock jury trial fees and jury consultant costs are generally categorized as attorneys’ fees, not taxable costs, and were not reasonably necessary in this case. See, e.g., Ryther v. KARE 11, 864 F. Supp. 1525, 1534 (D. Minn. 1994) (“The court also concludes that defendants should not be taxed . . . fees charged by a jury consultant who helped plaintiff develop the juror questionnaire and assisted in jury selection.”); Charles v. Daley, 846 F.2d 1057, 1075-77 (7th Cir. 1988) (reducing the district court’s award of mock oral

argument costs awarded as attorneys' fees). Accordingly, these costs were correctly denied by the Clerk of Court as not reasonably necessary.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. American Bank's Motion for Review of the Clerk of Court's Cost Judgment [Docket No. 320] is **GRANTED** in part; and
2. The Cost Judgment [Docket No. 294] is modified to allow an additional \$20,476.25 in costs.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: May 9, 2012.